




CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 10, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0199

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Inconclusive

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that Named Employee #1 (NE#1) used unauthorized force to prevent him from reentering a bus.

ADMINISTRATIVE NOTE:

On August 23, 2023, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

On April 19, 2023, Witness Supervisor #1 (WS#1) submitted an unsubstantiated misconduct screening (UMS) to OPA.¹ WS#1 wrote that officers responded to the Complainant's refusal to leave a bus. WS#1 wrote that officers convinced the Complainant to leave the bus but he attempted to re-enter, causing officers to stop him at the bus doors. WS#1 wrote that he screened a "striking motion" and initially determined it was not a use of force but later ordered a Type I Use of Force investigation after reviewing footage of the incident. WS#1 wrote he interviewed the Complainant at the hospital, where the Complainant was admitted under the Involuntary Treatment Act (ITA).² The Complainant alleged that officers had "broken his back and his arms." WS#1 wrote that the Complainant rolled over in a manner that would have been difficult with a broken back. WS#1 also wrote that the Seattle Fire Department (SFD) evaluated the Complainant at the scene and found no indication of broken bones.

OPA instructed WS#1 to submit a formal Complainant. OPA opened an investigation, including reviewing the UMS, OPA complaint, computer-aided dispatch (CAD) call report, incident reports & supplements, use of force documents and investigation, body-worn video (BWV), SFD run report, and Named Employee #1's training records. OPA also interviewed NE#1.

¹ OPA permits SPD supervisors to submit "allegations of misconduct that are clearly refuted by evidence" to OPA for review. See OPA Internal Operations and Training Manual Section 8.1 (Unsubstantiated Misconduct Screening). OPA reviews relevant evidence to determine whether the supervisor must submit the complaint to OPA. See *id.* OIG audits the process on a quarterly basis. See *id.*

² RCW 71.05.



a. CAD Call Report and Incident Report

The CAD call report showed that, on April 13, 2023, at about 7:35 AM, Witness Officer #1 (WO#1) was flagged down by a King County Metro bus driver reporting a hostile male who refused to leave the bus. Witness Officer #2 arrived about three minutes later. Several additional SPD officers responded. The CAD call report showed that additional units were requested at 7:42 AM, but seven minutes later, dispatch was advised that the male was detained and under control. An AMR was requested to transport the Complainant for an ITA. WS#1 arrived at 7:57 AM.

WO#1 wrote the incident report and a behavioral crisis template. WO#1 wrote that the bus driver asked him to remove the Complainant from the bus. WO#1 wrote that WO#2 and Witness Officer #3 (WO#3) also arrived. WO#1 wrote the Complainant was “causing a disturbance.” WO#1 wrote that he ordered the Complainant off the bus, but the Complainant refused. WO#1 wrote the Complainant was “lying on a bench talking incoherently.” WO#1 wrote that additional officers were requested due to the Complainant’s size. WO#1 wrote that the Complainant was escorted off the bus.

WO#1 wrote that an officer told the bus driver to drive away after the Complainant was removed. WO#1 wrote that the Complainant ran towards the bus, but officers blocked his path. WO#1 wrote that the Complainant spoke incoherently but referenced wanting to go to a hospital. WO#1 wrote that the Complainant lunged towards the bus again and was handcuffed before being evaluated and transported to a hospital.

b. BWV

OPA reviewed BWV and found it consistent with WO#1’s incident report. Notably, officers engaged the Complainant in conversation for about twelve minutes before removing him from the bus.

BWV showed:

After the Complainant was removed from the bus, WO#1 yelled for the bus driver to leave. WO#2 and NE#1 were on the bus: WO#2 engaged the bus driver near the driver’s seat, and NE#1 was toward the rear. The Complainant ran back towards the bus. WO#2 told NE#1 to “block that door.”

NE#1 stood at the middle bus door. As the Complainant approached, officers ran closely behind him. NE#1 kicked his left leg/foot forward, extending his leg before the Complainant entered the bus door. NE#1’s leg remained extended as the Complainant tried to enter the bus door. NE#1’s foot did not strike the Complainant, but the Complainant’s left hand appeared to swipe and make incidental contact with NE#1’s leg.

The Complainant grabbed the yellow handrails on both sides of the bus door as officers outside the bus tried to restrain him. NE#1 pushed the Complainant’s chest twice. The Complainant gripped the handrails, preventing the officers from pulling him from the bus. NE#1 raised both hands above his head and struck the Complainant’s right forearm with a downward swing, causing the Complainant’s right hand to release the handrail. The Complainant again grabbed the handrail with his right hand, and NE#1 repeated a similar motion on the Complainant’s left side. The strike appeared to hit Witness Officer #4’s arm as she attempted to remove the Complainant’s left hand from the handrail.



NE#1 appeared prepared to strike the Complainant's right arm again before WO#2 said, "Hold on. Just hold on." NE#1 brought his hands down with open palms onto the Complainant's right shoulder. WO#2 suggested grabbing the Complainant's arms. The officers grabbed the Complainant's arms and pulled him from the door.

A short time later, BWV recorded NE#1 and WO#4 speaking. WO#1, while laughing, told NE#1 he "chopped the shit" out of her arm. WO#4 said she knew what NE#1 was doing but that her arm happened to be there.

c. Use of Force Documentation and Investigation

NE#1 wrote a Type I Use of Force statement. NE#1 noted that the Complainant tried to enter the bus through a door he guarded for the bus driver's safety. NE#1 described pushing the Complainant back as other officers tried to remove the Complainant:

I put both of my hands together in a clapping-like motion and struck [the Complainant's] right hand, left hand, and right hand again, to prevent him from gaining an entry momentum onto the bus. These strikes proved successful. [The Complainant] did not complain of pain nor were there any visible injuries. It is unknown both strikes to his arms would have generated some complaint from a reasonable person who was not experiencing a crisis episode.

NE#1 wrote that force was necessary due to the Complainant's noncompliance and threat level:

I believed that [the Complainant] may have been attempting to fight me for participating in getting him off the bus. I also believed that he might have been attempting to instigate a physical altercation with the bus driver and as such it was necessary to prevent him from boarding the bus.

NE#1's chain of command, through his acting precinct captain, found his actions within policy. WS#1 and NE#1's watch commander believed NE#1's use of force did not—and was unlikely to reasonably—injure the Complainant.

d. SFD Run Report and Later Incident Documents

The SFD run report noted the limited nature of their assessment due to the Complainant's reported aggressive behavior and request to go to a hospital.

OPA also reviewed an incident report and BWV from the Complainant's arrest two days after this incident for an outstanding warrant. Neither the incident report nor arrest screening listed medical conditions or injuries, and the South Correctional Entity accepted the Complainant as an inmate. BWV from the arrest showed the Complainant walking without apparent difficulty and did not complain of pain.

e. OPA Interview – NE#1



OPA interviewed NE#1. NE#1 said he worked at SPD for about six years.

NE#1 recalled being assigned to an emphasis patrol on the date of the incident and responding to a disturbance on a bus. NE#1 stated officers were already engaged with the Complainant when he arrived. NE#1 recalled the Complainant looking disheveled, not making eye contact, rambling, and smelling of human feces. NE#1 stated that, after the Complainant left the bus, he stayed onboard because he suspected the Complainant may return. NE#1 said the Complainant ran towards the bus without warning.

OPA asked NE#1 to explain what he meant in his Use of Force Statement when he wrote that the Complainant was noncompliant and had a propensity to instigate physical altercations with officers. NE#1 noted his role as a backing officer at this incident and how he observed the Complainant's movements and communication. NE#1 said the Complainant briefly had balled fists. NE#1 also described how the Complainant ran towards the bus, even after being told to stop. NE#1 stated he felt the Complainant was trying to push through him and was worried the Complainant might attack the bus driver.

Concerning the kicking motion he made towards the Complainant, NE#1 stated he raised his foot instinctively to prevent the Complainant from reentering but stopped before contacting the Complainant. NE#1 stated he realized kicking the Complainant would not be the right threshold of force.

Concerning his strikes to the Complainant, NE#1 wrote he observed the Complainant grab the handrails to the bus, and this furthered his belief the Complainant would be noncompliant. NE#1 said there were three officers on the bus and three officers outside the bus around the Complainant. NE#1 said the Complainant's grip was so tight he could observe white in his hands from the loss of blood circulation. NE#1 recalled saying, "Hey, hey," and pushing the Complainant back, but the Complainant continued to push back. NE#1 described putting his hands together, clasped as if they were one big fist, then striking the Complainant's hands. NE#1 said this gave the other officers time to remove the Complainant's hands from the rails.

NE#1 described his strikes as reasonable, necessary, and proportional. NE#1 stated they were necessary to prevent the Complainant from reentering the bus. NE#1 stated the force employed by his strikes was proportional as the Complainant did not have injuries. NE#1 said he was six-foot-one inch tall and two-hundred-eighteen pounds "full of muscle." NE#1 said if he wanted to injure the Complainant, he could have done that, but instead, he used lower force that did not cause injury. NE#1 stated there was no reasonable alternative because their location on a bus with other people around made options like OC less desirable. When asked about trying to pry the Complainant's hands away from the handrails, NE#1 said the Complainant was within reach of his gun belt and he had to react quickly to ensure his safety.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

The Complainant alleged NE#1 used excessive force when preventing him from reentering a bus.



SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary, and proportional. Officers shall only use “objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective.” Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” SPD Policy 8.050. Reasonableness must allow for the fact that officers are often forced to make “split-second decisions” under tense, dynamic circumstances. *Id.* The policy also lists several factors that should be weighed when evaluating reasonableness. *See id.* Force is necessary where “no reasonably effective alternative to the use of force appeared to exist” and “the amount of force used was reasonable to effect the lawful purpose intended.” *Id.* Lastly, the force used must be proportional to the threat posed to the officer. *Id.*

Here, NE#1 used Type I force³ to prevent the Complainant from reentering the bus. Although Type I force is the lowest level of “reportable” force, it must be objectively reasonable, necessary, and proportional to a subject’s threat or resistance.

NE#1’s use of Type I force was reasonable. Although the Complainant had committed, at most, a misdemeanor trespass when NE#1 struck him, he actively resisted the officers’ attempts to prevent re-entry onto the bus. The Complainant ran away from officers and directly towards a door guarded by NE#1. However, NE#1’s speculation that the Complainant posed a danger to the bus driver was unfounded. There was no indication within NE#1’s knowledge that suggested that the Complainant targeted the bus driver. Similarly, as NE#1 noted, the Complainant was within reach of his duty belt, but there was no indication that the Complainant touched NE#1’s duty belt or even sought it. Nevertheless, NE#1 used relatively low force to stop him, then modulated to *de minimis* after WO#2 suggested that the officers grab the Complainant’s arms and pull him back.

NE#1’s use of force was necessary in that no reasonably effective alternative to force existed—the officers had spent over ten minutes talking to the Complainant before removing him from the bus earlier—and the use of Type I force was reasonable to attempt to break the Complainant’s grip on the guardrails.

NE#1’s use of force was also proportional to the resistance the Complainant offered. The Complainant ran towards the bus against the officer’s orders, directly towards NE#1—who had his foot outstretched—and gripped the handrails of the bus so tightly that NE#1 perceived white on the Complainant’s hands from the loss of circulation. After trying twice to use *de minimis* force to push the Complainant back, it was reasonable for NE#1 to elevate his use of force slightly to a Type I use of force to break the Complainant’s grip.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

³ Type I force is “force that causes transitory pain or the complaint of transitory pain.” SPD Policy 8.050. For example, Type I is a “strike with sufficient force to cause pain or complaint of pain.” SPD Policy 8.400.